

Decision 06-04-025 April 13, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of San José for Order authorizing the establishment of grade-separated bicycle and pedestrian crossing from approximate Mile Post (MP) 17.39 of the Union Pacific Rail Road Company (UPRR) at the east bank of the Guadalupe River Park.

Application 05-12-032
(Filed December 23, 2005)

O P I N I O N

Summary

The City of San José (City) is granted authority to construct a new grade-separated bicycle/pedestrian-rail crossing (crossing) under the main line tracks of the Union Pacific Railroad (UPRR), in the County of Santa Clara.

Discussion

I. Proposed Project

The City intends to construct a new crossing along the east bank of the Guadalupe River, under the tracks of UPRR's Niles Subdivision mainline. The proposed crossing will be referred to as CPUC Crossing No. 001DA-47.00-B. A vicinity map and an area map of the crossing location are provided in Attachment A.

The proposed crossing would fill a gap in the existing trail on the east bank of the Guadalupe River, which currently "dead ends" on both sides of the UPRR right of way, which contains two tracks. The rail corridor is separated from the dead ends of the trail by a six-foot safety fence, extending 500 feet along

both sides of the tracks, to dissuade trespassing onto the rail corridor. At the location of the proposed crossing is an old UPRR timber trestle bridge across the Guadalupe River. This location will allow for the construction of the crossing under the bridge, joining the two segments of trail.

Construction of the crossing will be accomplished in two stages. The first stage will be a temporary structure in place for an interim period (2+ years) until the United States Army Corps of Engineers (Corps) replaces the UPRR bridge.¹ When this bridge is replaced, the crossing will be rebuilt under the new bridge structure. The bridge will be replaced as part of a 100-year flood protection/Guadalupe River Park project being jointly developed between the Corps, Santa Clara Valley Water District (SCVWD), the City and the San José Redevelopment Agency. When the Corps replaces the UPRR bridge, the crossing under the bridge will be replaced with a new crossing, essentially in the same location.

The first phase of the trail project will consist of a six-foot wide asphalt paved surface that will be a part of the crossing. The crossing will be a sixty-foot long (thirty feet on each side from the track center line) structure. This structure will be covered with steel sheets on the top and sides to comply with UPRR requirements to protect trail users from flying ballast and leaks from train engines or rail cars.

The crossing constructed in the first phase will be six feet wide and have a vertical overhead clearance of seven feet. Due to the low vertical overhead

¹ This is part of a federal project as defined by the National Environmental Policy Act; the federal review has been combined with the state review of the project.

clearance, the City will install signs on both approaches to the crossing to warn bicyclists and pedestrians.

After replacement of the UPRR bridge, the crossing constructed in the second phase will be eight feet wide with a vertical overhead clearance of eleven feet. The difference between the dimensions of these two crossings is based on restrictions imposed by the Federal Fish and Wildlife Service based on the sensitive nature of the biology in this area. This requirement places the crossing between two trestle piers close to the top of the river bank, where space is at a premium. The result will be a higher vertical clearance than with the existing timber trestle bridge. This new crossing will also be less prone to flooding because it will be constructed further away from the river.

The new crossing will cross two tracks. The southern track is a low-density line, with a maximum allowed operating speed of ten miles per hour. UPRR operates four to six trains per day over this track and serves local industries. The northern track will form the south leg of a wye that will be used by the Peninsula Corridor Joint Powers Board --the special district that owns and administers the Caltrain commuter rail service-- to turn five trains per week, which, accounting for forward and return movements, will consist of approximately 10 crossings per week, primarily in the evenings. No passenger service is provided over this line.

The proposed crossing is a small part of the much larger Flood Control Project to protect against a 100-year flood. Also included in the overall project is the development of parks contiguous with the Guadalupe River, construction of trail segments along the river and the rail crossing.

II. Review under the California Environmental Quality Act

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e, the Commission must approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of a project that is subject to its discretionary approval, as either a lead or responsible agency under CEQA.

The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.² Here, the SCVWD is the lead agency for this project. CEQA requires that the Commission consider the lead agency's environmental documents and findings before acting on or approving this project.³

Environmental review of the project occurred under an agreement between the City, SCVWD, and the Corps. On November 16, 2001, the Corps approved the Final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) and recommended approval of the planned project. On March 7, 2001, in compliance with CEQA, the SCVWD filed its Notice of Determination (NOD) with the County Clerk of Santa Clara County, which stated that with mitigations the project will not have a significant effect on the environment (State

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

Clearinghouse Number 1999102056). Accordingly, the City adopted mitigation measures as a condition of approval of the project.

In the Final EIR/EIS, an at-grade crossing was the preferred alternative. Commission staff and UPRR objected to the construction of an at-grade crossing. As a result, a grade-separated crossing is now proposed. The SCVWD prepared an Addendum to the original Final EIR/EIS to evaluate the potential impacts of the grade-separated crossing proposed. Analysis of potential environmental impacts in the Addendum included wildlife, fish, vegetation, water quality, noise, traffic and hazardous materials/spill containment. On July 11, 2005, the SCVWD approved the Addendum, which concluded that the proposed modification to the project would not result in any new or more significant impacts to the environment.⁴

We have reviewed the City's environmental documentation. The documentation consists of the NOD, Final EIR, Statement of Overriding Considerations (SOC), the Addendum and the Final EA. Even though every impact identified in the environmental documents is being mitigated to a level of insignificance, an SOC was prepared in the event there are residual impacts, additional mitigations for insignificant impacts, or unavoidable impacts currently considered insignificant that are subsequently deemed to be significant. We find that these environmental documents are adequate for our decision-making purpose.

⁴ On August 3, 2005, the Corps approved an Environmental Assessment (EA) evaluating impacts of the grade-separated crossing.

Traffic, safety and noise are within the scope of the Commission's permitting process. The environmental documentation analyzing the proposed crossing discussed noise and traffic.

Traffic impacts identified in the Addendum and Final EA related to temporary traffic during construction. The construction contractor shall obtain a traffic permit from the Santa Clara County Public Works, and develop a Best Management Practice (BMP) to include obtaining encroachment permits from the City of San José, controlling access to the construction zone, repair of damages to City facilities or infrastructure and cleaning vehicles leaving the work site. With the BMP in place, no mitigations are required.

Noise impacts were identified in the Final EIR/EIS, related to short-term noise due to construction. The construction contractor shall comply with the City's local noise ordinances and develop a BMP for short-term noise. No additional mitigations are required.

Rail Crossing Engineering Section (RCES) staff has inspected the site of the proposed project. After reviewing the need for and safety of the relocated highway-rail crossing, RCES recommends that the requested authority sought by the City be granted but expire if not exercised within a period of two years.

Application 05-12-032 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a highway across a railroad.

Categorization and Need for Hearings

In Resolution ALJ 176-3165, dated January 12, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received.

Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3165.

Waiver of Comment Period

This application is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission Daily Calendar on December 30, 2005. No protests have been filed.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a crossing under the main line tracks of UPRR in San José, Santa Clara County. The new crossing number of the relocated crossing will be referred to as 001DA-47.00-B.
3. Public convenience, safety, and necessity require the construction of the new grade-separated pedestrian/bicycle-rail crossing.
4. The SCVWD is the lead agency for this project under CEQA, as amended.
5. The Commission is a responsible agency for this project, and has reviewed and considered the City's environmental documentation.
6. On March 7, 2001, the SCVWD filed its NOD approving the project and found that the project would not have a significant effect on the environment.
7. The SCVWD's environmental documents are adequate for our decision-making purposes.

8. Traffic, safety and noise are within the scope of the Commission's permitting process.

9. The Commission finds that for each potentially significant impact related to traffic, safety and noise, the SCVWD adopted feasible mitigation measures to either eliminate or substantially lessen those impacts.

Conclusions of Law

1. The application is uncontested and a public hearing is not necessary.
2. We adopt the SCVWD's NOD and require the mitigation measures identified in the Addendum for purposes of our approval.
3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The City of San José (City) is authorized to construct a grade-separated bicycle/pedestrian-rail crossing at the east bank of the Guadalupe River, under the main line tracks of the Union Pacific Railroad (UPRR) in San José, Santa Clara County. The new crossing will be known as CPUC Crossing No. 001DA-47.00-B.
2. After construction of the structure of Phase one of the project as specified in the plans attached to this Application, the City shall install signs warning of low overhead clearance on both approaches to the crossing.
3. City shall comply with all applicable General Orders and the Federal Highway Administration's Manual on Uniform Traffic Control Devices as amended by the California Supplement.
4. Within 30 days after completion of the work under this order, UPRR shall notify Rail Crossing Engineering Section in writing, by submitting a completed

standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), that the authorized work is completed.

5. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

6. This application is granted as set forth above.

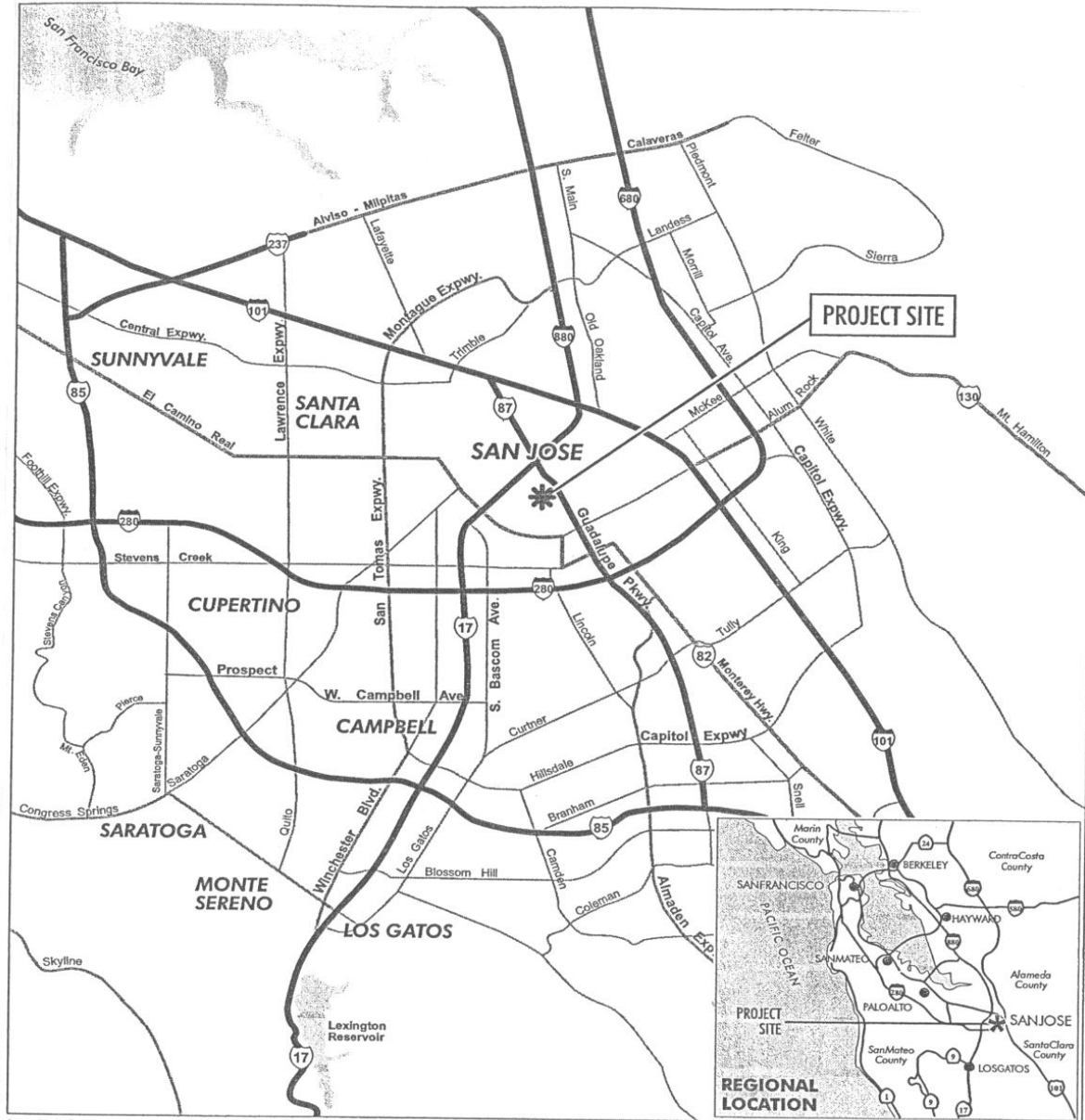
7. Application 05-12-032 is closed.

This order is effective 30 days from today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

ATTACHMENT A



LSA



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MILES

Regional Location Map



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Project Site Location